

REMARKS

The Office Action mailed February 27, 2006 has been reviewed and carefully considered. The Examiner's reconsideration is respectfully requested in view of the above amendments and the following remarks.

Claims 1-19 are pending in the present application.

By the Office Action, claims 1-19 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,757,248 to Li et al. (hereinafter Li) in view of U.S. Patent No. 6,901,048 to Wang et al. (Wang).

Applicant respectfully traverses the rejection.

The Examiner's statement that Li does not disclose the details of a loss of a physical layer, and namely, does not disclose: "controlling a data rate of the data stream between the server and the buffer to ensure maintenance of a steady data stream from the customer premise unit to the customer during a loss of a physical layer between the server and the customer premise unit," essentially as claimed in claims 1 and 11, is acknowledged.

While Wang is now cited as allegedly curing the deficiencies of Li, the Applicant respectfully disagrees. Applicant has reviewed Wang overall, and while Wang does generally mention the issue of link failures, what Wang teaches to address such problem is a computer network that *re-routes* data packets to alternate paths in the event of a network link failure. However, this is not equivalent, or related to, controlling a data rate of a data stream, as presently claimed!

That is, Wang employs protection paths ("p-cycles") which consist of a closed loop passing through nodes and across links in the network. Links which are part of the protection paths or links whose end nodes are part of a given protection path are said to

be protected by that protection path. When failure of a protected link is detected by a node adjacent to that protected link, a tunnel is established between the end nodes of the link. Datagrams which would ordinarily be transmitted across the failed link are encapsulated within the bodies of larger datagrams that are transmitted across the protection path. *See* Col. 2, line 61 to Col. 3, line 10.

Accordingly, the approach taken by Wang to deal with a network link failure involves the re-routing of data packets. There is absolutely no mention, teaching or disclosure of controlling data rates of a data stream, much less controlling a data rate of a data stream between the server and the buffer to ensure maintenance of a steady data stream from the customer premise unit to the customer during a loss of a physical layer between the server and the customer premise unit, essentially as claimed in claims 1 and 11. The *re-routing* of data packets as in Wang is completely nonanalogous and bears no relation to *controlling a rate of a data stream*, as in the present invention.

The Applicant has paid careful attention in reviewing the Examiner's cited portions of Wang but still finds no disclosure of data rate control. Instead, Col 10, lines 15-53 discuss various steps performed by elements of a mesh network with nodes equipped to perform protection switching (re-routing). It describes the formation of a "tunnel" between nodes at either end of a failed but protected link, through which data is re-routed. *See* lines 31-37. Indeed, Wang goes on to state in Col. 10, lines 54-55 that: "[I]f the link failure is a permanent one, the result will be a change in the network topology." This change in the actual arrangement in which nodes are connected to each other is clearly indicative of the re-routing aspect of Wang. Finally, the cited Col. 11, lines 35-42 simply discusses an operational step of a node forming part of a p-cycle.

At least in light of the above arguments, it is respectfully asserted that claims 1 and 11 are allowable over Li in view of Wang. Claims 2-10 and 12-19 depend either directly or indirectly on claims 1 and 11, respectively. As such, the Applicant respectfully submits that the dependent claims are patentable and nonobvious for at least the reasons given above for claims 1 and 11.

Accordingly, the Applicants respectfully request withdrawal of all the rejections under 35 U.S.C. §103(a), and allowance of pending claims 1-19 on the merits.

In view of the foregoing amendments and remarks, it is respectfully submitted that all the claims now pending in the application are in condition for allowance.

CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that claims 1-19 are patentable and nonobvious over the cited references. Consequently, the Applicants respectfully request reconsideration and withdrawal of the rejections and allowance of the application. Such early and favorable action is earnestly solicited.

No fees are believed to be due at this time. The office is hereby authorized to charge any additional fees which may be required in connection with this amendment and to credit any overpayment to our Deposit Account No. 07-0832.

Respectfully submitted,

Dated: 15 May 06

By 

Joseph Kolodky Attorney
Registration No. 39,731
609-734-6816

CORRESPONDENCE ADDRESS:

**THOMSON LICENSING INC.
2 INDEPENDENCE WAY
P.O. BOX 5312
PRINCETON, NJ 08540**